

By: Kacal

H.B. No. 3063

Substitute the following for H.B. No. 3063:

By: González of El Paso

C.S.H.B. No. 3063

A BILL TO BE ENTITLED

AN ACT

relating to agricultural liens.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 70.401, Property Code, is amended by amending Subdivision (4) and adding Subdivisions (5), (6), (7), and (8) to read as follows:

(4) "Company-owned crop" means an agricultural crop:

(A) that is in the possession of a warehouse or contract purchaser located in this state and for which the agricultural producer has received full payment;

(B) that is not an open storage crop; or

(C) for which the warehouse or the contract purchaser tenders payment and the agricultural producer, without coercion, defers payment.

(5) "Contract purchaser" means a person who has agreed under a contract to purchase an agricultural crop or otherwise pay the agricultural producer for growing, producing, or harvesting the agricultural crop. The term includes ~~does not include~~ a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.).

(6) "Open storage crop" means an agricultural crop that:

(A) an agricultural producer delivers or

1 transfers to:

2 (i) a warehouse for storage; or

3 (ii) a contract purchaser located in this
4 state;

5 (B) is not covered by a warehouse receipt; and

6 (C) is not owned by the lessee, owner, or
7 operator of the warehouse in which the crop is stored or the
8 contract purchaser to which the crop is delivered or transferred.

9 (7) "Secured lender" means a person that:

10 (A) has loaned money to a warehouse or a contract
11 purchaser; and

12 (B) holds a perfected secured lien against a
13 company-owned crop.

14 (8) "Warehouse" means a facility that stores or
15 handles any agricultural crop after the crop is harvested,
16 including a facility operated by a person who, as to the transaction
17 in question, is licensed and bonded under Chapter 14, Agriculture
18 Code, or the United States Warehouse Act (7 U.S.C. Section 241 et
19 seq.). The term includes a person engaged in the business of
20 operating a warehouse.

21 SECTION 2. Section 70.402, Property Code, is amended to
22 read as follows:

23 Sec. 70.402. LIEN CREATED. (a) An agricultural producer
24 who, under a contract with a contract purchaser, is to receive
25 consideration for selling an agricultural crop grown, produced, or
26 harvested by the producer has a lien against that crop for the
27 amount owed under the contract, or for the market [~~reasonable~~]

1 value of the crop on the date of transfer or delivery if there is no
2 agreement concerning the amount owed under the contract.

3 (b) An agricultural producer who delivers or transfers an
4 agricultural crop grown, produced, or harvested by the producer to
5 a warehouse has a lien against that agricultural crop for the market
6 value of the agricultural crop:

7 (1) on the date of delivery or transfer; or

8 (2) if there is to be a series of deliveries to the
9 warehouse, on the date of the first delivery of the agricultural
10 crop to the warehouse.

11 (c) A lien created under this subchapter is on every
12 agricultural crop, either in raw or processed form, that has been
13 transferred or delivered by the agricultural producer and is in the
14 possession of the warehouse or the contract purchaser, and if the
15 warehouse or the contract purchaser sells all or part of the crop,
16 on the proceeds of the sale. If an open storage [~~the agricultural~~]
17 crop is commingled with a company-owned crop by a warehouse or a
18 contract purchaser after the crop has been transferred or
19 delivered, a lien created under this subchapter applies only to
20 that portion of the agricultural crop in the possession of the
21 warehouse or the contract purchaser [~~purchaser's inventory~~] in an
22 amount that is equal to the amount of the crop transferred or
23 delivered by the agricultural producer.

24 (d) [~~(e)~~] For purposes of this subchapter, an agricultural
25 crop or processed form of an agricultural crop deposited by a
26 contract purchaser with a warehouse, whether or not a warehouse
27 receipt is given as security, is considered to be in the possession

1 of the contract purchaser and subject to the lien created by this
2 subchapter.

3 SECTION 3. Section 70.403, Property Code, is amended to
4 read as follows:

5 Sec. 70.403. WHEN LIEN ATTACHES. A lien created under this
6 subchapter attaches on the date on which physical possession of the
7 agricultural crop is delivered or transferred by the agricultural
8 producer to the warehouse or to the contract purchaser or the
9 purchaser's agent, or if there is to be a series of deliveries [~~to~~
10 ~~the contract purchaser or purchaser's agent~~], on the date of the
11 first delivery of the agricultural crop [~~to the contract purchaser~~
12 ~~or purchaser's agent~~].

13 SECTION 4. Section 70.404, Property Code, is amended to
14 read as follows:

15 Sec. 70.404. APPLICABILITY OF OTHER LAW; EFFECT ON OTHER
16 LAW. (a) Except as provided by Section 70.4045 of this code,
17 Chapter 9, Business & Commerce Code, including applicable filing
18 and perfection requirements, applies to a lien created under this
19 subchapter.

20 (b) Except as provided by Subsection (c), to the extent of a
21 conflict, this subchapter controls over any other law.

22 (c) This subchapter does not abridge the protections
23 afforded by any applicable law, including:

24 (1) Chapter 14, Agriculture Code;

25 (2) Chapter 7, Business & Commerce Code;

26 (3) the United States Warehouse Act (7 U.S.C. Section
27 241 et seq.); or

1 (4) common law, including the law of bailment.

2 SECTION 5. Section 70.4045, Property Code, is amended to
3 read as follows:

4 Sec. 70.4045. PERFECTION AND PRIORITY OF AGRICULTURAL LIEN
5 ON CROPS. (a) Notwithstanding Chapter 9, Business & Commerce Code,
6 a lien created under this subchapter is perfected at the time the
7 lien attaches under Section 70.403 and continues to be perfected if
8 a financing statement covering the agricultural crop is filed on or
9 before the 90th day after the date:

10 (1) the physical possession of the crop is delivered
11 or transferred by the agricultural producer to the warehouse or the
12 contract purchaser or the purchaser's agent, if there is only one
13 delivery [~~under the contract~~]; or

14 (2) of the last delivery of the crop to the warehouse
15 or the contract purchaser or the purchaser's agent, if there is a
16 series of deliveries [~~under the contract~~].

17 (b) If a financing statement covering the agricultural crop
18 is not filed within the time prescribed by Subsection (a)(1) or (2),
19 as applicable, the lien is considered unperfected [~~on the date the~~
20 ~~lien attached until the date the financing statement is filed or the~~
21 ~~lien is perfected under Chapter 9, Business & Commerce Code~~].

22 (c) Notwithstanding Chapter 9, Business & Commerce Code,
23 and except as provided by Subsection (d), a lien created and
24 perfected under this subchapter has priority over a conflicting
25 security interest in or lien on the agricultural crop or the
26 proceeds from the sale of the crop created by the warehouse or the
27 contract purchaser in favor of a third party, [~~other than a cotton~~

1 ~~ginner's lien created under Section 70.003(d),]~~ regardless of the
2 date the security interest or lien created by the warehouse or the
3 contract purchaser attached. This subsection does not affect:

4 (1) the validity or priority of a security interest or
5 lien:

6 (A) created and perfected to secure a loan
7 directly to the agricultural producer; or

8 (B) created and perfected under Chapter 9,
9 Business & Commerce Code, to secure a loan to a warehouse or a
10 contract purchaser on a company-owned crop in favor of a secured
11 lender;

12 (2) the validity or priority of a cotton ginner's lien
13 created under Section 70.003(d); or

14 (3) the rights of a holder of a negotiable warehouse
15 receipt.

16 (d) Subsection (c) does not apply to a contract purchaser
17 who purchases an agricultural crop from an agricultural producer
18 under a marketing contract created under:

19 (1) Section 52.016, Agriculture Code; or

20 (2) regulations adopted by the United States
21 Department of Agriculture under Title 7 of the United States Code.

22 SECTION 6. Section 70.406(a), Property Code, is amended to
23 read as follows:

24 (a) A buyer in ordinary course of business of an
25 agricultural crop, including a person who buys any portion of an
26 agricultural crop from a warehouse or a contract purchaser, whether
27 or not the agricultural crop has been commingled, takes the

1 agricultural crop free of a lien created under this subchapter, and
2 the lien created by this subchapter does not pass to any subsequent
3 claimant of the agricultural crop.

4 SECTION 7. Section 70.407(a), Property Code, is amended to
5 read as follows:

6 (a) A lien created under this subchapter is discharged when:

7 (1) the lienholder receives full payment for the
8 agricultural crop; or

9 (2) payment is tendered by the warehouse or the
10 contract purchaser, as applicable, and the lienholder, without
11 coercion, defers payment.

12 SECTION 8. Section 70.410, Property Code, is amended to
13 read as follows:

14 Sec. 70.410. WAIVER OF CERTAIN RIGHTS PROHIBITED. An
15 agricultural producer's agreement with a warehouse or a contract
16 purchaser to waive the producer's right to seek a remedy provided by
17 this subchapter is void.

18 SECTION 9. The changes in law made by this Act apply only to
19 an agricultural producer who delivers or transfers an agricultural
20 crop grown, produced, or harvested by the producer to a warehouse or
21 a contract purchaser on or after the effective date of this Act. An
22 agricultural producer who delivers or transfers an agricultural
23 crop grown, produced, or harvested by the producer to a warehouse or
24 a contract purchaser before the effective date of this Act is
25 governed by the law as it existed immediately before that date, and
26 that law is continued in effect for that purpose.

27 SECTION 10. This Act takes effect September 1, 2017.